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Attorneys for Non-Party Nintendo of America Inc.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

FEDERAL TRADE COMMISSION

Plaintiff,

v.

MICROSOFT CORPORATION,

and

ACTIVISION BLIZZARD, INC.,

Defendants.

Case No. 23-cv-02880-JSC

**NON-PARTY NINTENDO OF AMERICA
INC. MOTION FOR A PROTECTIVE
ORDER RE DKT. NO. 177
(DEFENDANTS PROPOSED PRETRIAL
FINDINGS OF FACT AND
CONCLUSIONS OF LAW)**

Pursuant to Fed. R. Civ. P. 26(c), Non-Party Nintendo of America Inc. (“NOA”) hereby moves for a protective order regarding its confidential information contained in Microsoft Corp. and Activision Blizzard, Inc. (collectively, “Defendants”) Proposed Pretrial Findings of Fact and Conclusions of Law (Dkt. No. 177).

I. INTRODUCTION

On June 22, 2023, Defendants filed their Proposed Pretrial Findings of Fact and Conclusions of Law. (Dkt. No. 177). Defendants also filed their Administrative Motion to Consider Whether Another Party’s Material Should Be Sealed pursuant to Civil L.R. 79-5(f). (Dkt. No. 179). On June 23, 2023, Defendants informed NOA that certain portions of their filing included Nintendo’s confidential information produced during the course of discovery in *In the Matter of Microsoft Corp. and Activision Blizzard, Inc.*, before the FTC Office of Administrative Law Judges, Docket No. 9412. However, Defendants’ notice did not inform NOA which documents or testimony were being referenced in Defendants’ filing and NOA is therefore unable to ascertain which portions NOA needs to designate to request to remain under seal. On June 27, 2023, NOA inquired with Defendants on this matter, but at the time of this filing has not received a response.

II. ARGUMENT

Under Fed. R. Civ. P. 26(c), the court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. A good cause analysis under Rule 26(c) entails a balancing of the needs for discovery against the need for confidentiality. *CBS Interactive, Inc. v. Etilize, Inc.*, 257 F.R.D. 195, 205 (N.D. Cal. 2009). Courts have broad latitude under the law to tailor protective orders to prevent disclosure of materials for many types of information, including, but not limited to, trade secrets or other confidential research, development, or commercial information. *Id.* at 201.

Good cause exists here. Since NOA cannot determine the extent of Defendants’ use of NOA’s confidential information, NOA objects to the disclosure of any such information contained in Defendants’ Proposed Pretrial Findings of Fact and Conclusions of Law.

Alternatively, NOA requests that such information be provisionally sealed until NOA may confer with Defendants to obtain the necessary information in order to file its Civil L.R. 79-5 Statement.

III. CONCLUSION

For the foregoing reasons, Non-Party NOA respectfully request the Court to keep sealed the entirety of NOA's confidential information contained in Defendants' Proposed Pretrial Findings of Fact and Conclusions of Law (Dkt. No. 177) and for that information to remain redacted on the Court's public docket. Alternatively, NOA requests that such information be provisionally sealed until NOA may confer with Defendants to obtain the necessary information in order to file its Civil L.R. 79-5 Statement.

Dated: June 29, 2023

VENABLE LLP

By: /s/ Steven E. Swaney
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